Cases Related with I.T.(Part_01)

CAPITAL LOSS.

--Carry forward and set off – Loss sustained in assessment under Act of 1922 Benefit can be given under Act of 1961. **AIR 1987 SC 138: 1987 Tax LR 682.**

--Loss on sale of land. **AIR 1987 SC 564: 1986 Tax LR 1171.**

--Same out of assessors profit given by way of advance to a company under leave and licence agreement for modernization of its plant – Assessee only operating said company under leave and license agreement and business run by that company was not assesse's own business – Advance given as capital to said company – claim of deduction of said advance as deductible on ground that it became irrecoverable on account of incapacity of that company to repay same – Transaction not in nature of loan transaction or money leading transaction – Loss suffered by assessee was capital loss – Amount could not be deductible from assesses income as business loss. M/s. Hasimara Industries Ltd. v. Commissioner of Income-tax, West Bengal. **AIR 1998 SC 2349: 1998 AIE SCW 2321: 1998 Tax LR 836: 1998 (4) JT 53: 1998 (5) Supreme 93: 1998 (3) Scale 598: 1998 (5) SCC 33.**

CAPITAL OF PUNJAB (DEVELOPMENT AND REGULATION) ACT (27 OF 1952)

See under Town Planning and Housing

CAPITAL OF PUNJAB (DEVELOPMENT AND REGULATION) BUILDING RULES (1952)

See under Town Planning and Housing

CAPITAL OR REVENUE EXPENDITURE

- **Betterment charges paid under Town Planning Scheme – It is capital expenditure and not revenue expenditure – on inclusion of land in scheme its valuation increase – May also facilitate better running of business – Latter factor, however, does not make it revenue expenditure. 1987 Tax LR 86 (Mad), Overruled.**

Under the Bombay Town Planning Scheme, the lands of different owners are treated as if included in a common pool and various improvement are effected for the better enjoyment of the land under the scheme, for such improvement by way of laying down roads, making provision for drainage etc. under the scheme, the owner get

the advantages of betterment of land in question and the valuation of land increase because of the improvement effected on the land. Simply because such improvement also results in providing better facility for carrying out the business of the assessee whose land is included in the scheme, the betterment charge required to be paid by the assessee. Dose not becomes the revenue expenditure. Such payment has no direct nexus with the day to day running of the business. The capital expenditure incurred in connection with the business activities ultimately results in efficiently carrying on the business and by the process given aid in running of the day to day more efficiently but simply on that score, the capital expenditure does not become a revenue expenditure. In deciding whether expenditure is capital expenditure or revenue expenditure, the question of voluntary and or involuntary payment also becomes immaterial. It is the nature of the expenditure that determines the issue. ITR No. 197 of 1976, D/- 9/10-3-1977 (Guj), **Affirmed.** Arvind Mills Ltd. v. Commissioner of Income-tax, Gujarat. **AIR 1993 SC 103: 1992 AIR SCW 2953: 1993 Tax LR 98: (1992) 3 SCC 535: (1992) 3 SCJ 234: 1992 (4) JT 330.**

BUSINESS PROFITS.

-Sale of business of assessee as a going concern – Surplus as result of difference between written down value and sale consideration for plant, machinery and dead stock transferred by assessee – Is taxable under S. 41(2) and not under S. 45. 1981 Tax LR 1161 (Guj) – Reversed.

The assessee sold the business carried on by as a whole going concern to a company. The consideration paid by allotment to fully Paid up shares according to original shares of partners. A return was field by assessee showing 'nil' income with a note that since the partnership firm was converted into privet limited company as going concern there was no income chargeable to tax either under S. 41(2) or under S. 45 of the 1961 Act. The income-tax officer held that tax was payable under S. 41(2) on the surplus amount i.e. difference between the written down value of plant, machinery and dead stock as per assessee's books and the value of the same as revalued and tax was payable under S. 41(2) on such difference.

Held, that the surplus as a result of difference between the written down value and the scale consideration for the plant, machinery and dead stock transferred by the assessee is taxable under Section 41(2) of the 1961 Act and not under section 45. but the liability

under Section 41(2) is limited to the amount of surplus to the extent of difference between the written down value and the actual cost. If amount of surplus exceed the difference between the written down value and the actual cost then the surplus amount to the extent of such excess will have to be treated as capital gain for the purpose of the taxation. Commissioner of income-tax v. M/s. Artex Manufacturing Co. **AIR 1997 SC 2970: 1997 AIR SCW 2997: 1997 Tax LR 864: 1997 (4) Scale 548: 1997 (6) SCC 437: 1997 (6) JT 261: 1997 (7) Supreme 130.**

BUSINESS PROFFITS TAX ACT (21 OF 1947) PREAMBLE

-Pre. – Income-tax Act (1922), S. 60(3) – Exemption – Agreement between central board of Revenue and Association in 1945 that profit of the association should not be assessed to Income-tax, Supper tax and Excess profit tax – Effect – See Income – tax Act (1922), S. 60(3). **AIR 1960 SC 1320.**

-Sch. 2, R. 2(1) – 'Reserves' – Non resident bank incorporated under national Bank Act of U.S.A. – 'Undivided Profits' – If part of 'reserves'.

The assessee, a non-resident Bank in-corporate under the national bank Act of the United States of America with its head office in that country and branches in India was assessed under the Business Profit Tax Act. The balance-sheet of the assessee-company and other evidence produced showed that the capital fund consisted of three kinds of funds (1) capital (2) surplus, (3) undivided profits. The assessee contended that in computing the amount for the purpose of abatement, it was entitled to include what is termed in the united states 'Undivided Profits' as this items falls within the word 'reserves' in R. 2(1) of Sch. II of the Act.

Held, the creation and maintenance of the item known, as 'undivided profits' being a requirement of the Treasury rules which are made under the statue, it can not be said that the amount of undivided profits in the balance-sheet was not allocated as a result of either a resolution of the Directors, accepted by the share holders or on account of requirement of the law. The amount designated as undivided profit' was a part of the reserves and had to be taken in to account when computing the capital and reserve within R. 2(1) of Sch. II of the Act. (1957) 31 ITR 836 (Bom), **Reversed.** National City Bank v. Commissioner of Income-tax, Bombay. **AIR 1961 SC 812: (1961) 3 SCR 371: (1962) 2 SCJ 45: (1961) 42 ITR 17.**

SCHEDULE 2, RULE 2-A

-Sch. 2, R. 2-A – Assessee sustaining loss in business in part of India to which the Act does not extend – Computation of capital. Commr. Of I.-T., Ahmedabad Karamchand Premchand Ltd., Ahmedabad. **AIR 1960 SC 1175: (1960) 40 ITR 106: 1960 SCJ 1289: (1960) 3 SCR 727.**

-Determination of cost of acquisition – Asset is depreciable and assessee availed deduction on account of depreciation – Cost of acquisition should be determined in terms of S. 50 read with S. 48 of the I.-T. Act.

1994 Tax LR 667 (Bom) (FB), Overruled.

Where the capital asset purchased by the assessee is depreciable or non depreciable asset, the assessee will have the option for substituting for its actual cost of acquisition its fair market value as on 1-1-1954 but where it is a depreciable asset and the assessee has enjoy depreciable allowances his cost of acquisition shall have to be determine as provided in the S. 50.

S. 50(1) has no dependences on the provision of S. 55(2). There is no mention of "fair market value" in S. 50(1) and beside that the adjustment stated there are with reference to written down value only which has nothing to do with the faire market value. Therefore, in the instance case where the capital asset is depreciable and the assessee has availed of deduction on account of depreciation the cost of acquisition shall have to be determined in term of the provisions of S. 50 read with S. 48. Section 50 is in absolute terms specially providing for fixing the cost of acquisition in the case of depreciable assets only.

1975 Tax LR 310 (Guj); 1978 Tax LR 803 (All) and (1981) Tax LR 1302 (Cal), **Approved.** The Commonwealth trust Ltd., Calicut, Kerala v. Commissioner of Income Tax, Kerala-II, Ernakulam. **AIR 1997 SC 3580: 1997 AIR SCW 3687: 1997 Tax LR 934:1997 (7) JT 479: 1997 (5) Scale 551.**

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Transfer of – Agricultural land – Conversion into non-agricultural and development as housing sites – Allotment of plots therein on lease for 99 years, - Premium charged – Section 12-b of 1922 Act applicable – Grant of lease amount to transfer of capital assets. R.K. Palshikar (H.U.F.) v. I.T. Commissioner, M.P. **AIR 1988 SC 1305: 1988 Tax LR 1201: (1988) 3 SCC 594: (1988) 172 ITR 311.**

CAPITAL RECEIPT OR REVENUE RECEIPT

- Assessee in receipt of cash allowances from ex-ruler – Cash allowances abolished by Bombay Act of 1955 – State Government under S. 15 (1) (d) of Bombay Act however in its discretion granting him cash allowance as compassionate payment – compassionate payment received by assessee is capital receipt and not income. (1980) 121 ITR 493 (Bom), Reversed.

Under the Huzur order dated April 8, 1947 passed by the Maharaja of Kolhapur the appellant-assessee was granted a cash allowances of Rs. 3000/– per month from April 1, 1947. After the merger of the Kolhapur State the allowances was discontinued from July 31, 1955. The discontinued because of the provision of the Bombay Merged Territories Miscellaneous alienation Abolition Act, 1955. The Act was passed to abolish miscellaneous alienations of various kind prevailing in the merged territories in the State of Bombay. The State Govt. has gave its sanction under Cl. (d) of the provision to S. 15(1) of the Bombay Act to making of compensation payment of Rs. 3000 per month with the effect from 1august 1956, to the assessee during her life time as compensation for abolition of the cash allowances held by her subject to certain condition. The question was whether the compensation payment received by assessee was revenue receipt or capital receipt.

Held, that the compassionate payment received by the assessee during the financial year in question are capital receipts and, therefore, are not income within the meaning of S. 2(24) of the income-tax Act.

Section 15 of the Bombay Act in its various clauses provides for payment of compensation of alienees for abolition of allowances in cash or kind held by them. The case falling under sub-section (1), Cls. (i),(ii) and (iii) fall under a different category than what is covered under Cl. (d) of the proviso. While Cls. (i), (ii) and (iii) provide for statutory payment at different rates for different category of person falling under Cl. (d) it requires an aliened to make an application had been made in the prescribed form before the first day of August, 1958, the State Government, if satisfied after such enquiry, as it thinks fit, that the applicant has no other source of income, there shall be paid as a compassionate payment, an amount equal to such allowances during his life time or for lesser period, as the State Government may think fit. The payment made under S. 15(1)(d) is purely discretionary payment. No statutory right to receive payment. No statutory right to receive payment is created by S. 15(1)(d) unlike Cls. (i), (ii)(iii) of S. 15(i). the payment made

by the government has no origin in what might be called the real source of income. No doubt S. 15(1), proviso Cl. (d) enable the applicant to seek payment but that is far from saying that it is source. The fact the assessee has applied for a grant of maintenance nor again, the periodicity of payment would therefore, be conclusive. The amount received by the assessee is not income within the meaning of S. 2(24). Padmaraje R. Kadambande v. Commissioner of Income-tax, Pune. **AIR 1992 SC 1495: 1992 AIR SCW 1600: 1992 Tax LR 749: (1992) 195 ITR 877.**

BUSINESS INCOME

-Assessee, a limited company leasing out its assets – Temporary suspension of business by company for temporary period for an object to tide over the crises condition – income of assessee from lease rent would assessable tot ax under the head profits and gain of business.

The assessee company was a limited company. It carried on the business of the manufacture of the textiles. From 1949, the assessee company started running into losses. At the end of the December 1953 the position was that as against the capital of Rs. 11, 00,000/- the accumulated liabilities of the assessee company amounted Rs. 26,00,000/-. Because of the assessee company stopped its manufacturing activity from December 1953; this state of affairs continued till 21-5-56 when one of the creditors of the company filed a winding up petition the High Court. M/s. Industrial Finance Corporation, who was one of the major creditors of the company, had in exercise its powers under an English Mortgage of the fixed assets of the company taken actual physical possession of the movable property of the hypothecated to them. Under S. 153, Companies Act, 1913, the High Court with the approval of the assessee company and the creditors evolved a scheme where under the business assets of the assessee company were let out to the company at Calcutta on Rs. 2, 50,000/- per year rent. The lease was for ten years with an option of renewal for another ten years. The lease money realized by the assessee company for assessment years 1957-58 to 1999-60 was assessed by the department under the head profit and gain of business. But the subsequent assessment year the income-tax Officer held that the income from the lease rent was liable to be taxed under the head income from other source. On appeal the commissioner upheld the finding of the I.T.O. However the tribunal and the high court upheld the claim of the assessee company that the lease income was business income.

Held, on the fact that the assessee intended that there should be a temporary suspension of business for the purpose of reconstruction of the company and for that matter there must be stoppage of the user of the machinery by the assessee. The intention of the assessee the intention of the assessee was not with to part with the machine but to lease it out for a temporary period as part of explosion. In such a circumstances, it could not be said that no business was carried on and their income derived from the machine letting was only a rent income. There was a temporary suspension of business for temporary period for object to tide over the crisis condition. There was never any act indicating that assessee never intended to carry on the business. There fore the finding that the income derived by the assessee company by way of lease rent from the letting out f its assets during the year ended 31st December, 1959, 31st December, 1960, 31, December 1961 and 31, December 1962 was assessable to tax under the head profit and gains of business could not be said to be perverse or unsuitable. Case law discussed. Commissioner of Income tax, Lucknow v. M/s. Vikram Cotton Mills Ltd. **AIR 1988 SC 460: 1988 Tax LR 833: (1988) 169 ITR 597: 1988 Supp SCC 442.**

-Computation – Double deduction in regard to same business expenditure – Not permissible – Expenditure of capital nature on scientific research – Double deduction under S. 32 and S. 35 cannot be allowed – Retrospective amendment effected by Finance (No. 2) Act of 1980 – Clarifies this position and is not unconditional. 1981 Tax LR 552 (Kant) and 1991 TAX LR 202 (Bom), Over ruled.

The Provision of S. 10(2) (vi) and section 20(2) (xiv) of the 1922 Act provide that where an assessee incurred expenditure of a capital nature on scientific research related to business and the expenditure results in the acquisition of an asset, the assessee can claim, under Clause (vi), a deduction of the specified percentage of the write down value of the asset under Clause (xiv) he can ask for deduction, in five consecutive years, of the expenditure he has incurred on the acquisition f the assets. Assuming that the assets used for the scientific research related to business is also ipso facto an assets used for the purpose of business if these two provisions are applied simultaneously, it would result in granting an assessee a double allowance in respect of the same expenditure - one of the entire amount over a period of five years and the other a percentage of the expenditure over a number of consecutive years at a granted Scale. The provision of S. 32(1)(ii) and S. 35(2)(i)(iv) and (v) read with explanation 1 to S. 43(1) of the 1961 Act virtually repeat the provisions contained in Ss. 10(2)(vi) and 10(2)(xiv) of the 1922 Act.

Held, that the legislature could not have envisaged a double deduction in respect of the same expenditure, even though it is true that the two heads of the deduction do not completely overlap and there is some difference in the relation of the two deduction. It is though unwritten, axiom that no legislature could have at all intended a double deduction in regard to the same business outgoing; and if it is intended it will clearly expressed. In other words, in the absence of the clear statutory indication to the contrary, the statue should not be read so as to permit an assessee two deduction – both under S. 10(2)(vi) and S. 10(2)(xiv) under the 1922 Act or under S. 32(1)(ii) and S. 35(2)(iv) of the 1961 Act – qua the same expenditure. The use of the words "in clause (d) of the proviso to S. 10(2) (xiv) of the 1922 Act and S. 35(2) (iv) of the 1961 Act is not a contraindication which permits a disallowances of depreciation only in the previous years in which the other allowances is actually allowed and the purpose of those words is totally different. The statue does not permit double deduction. The restriction imposed would, therefore, be illogical if double deduction is allowed.

Thus even before the 1980 amendment, the Act did not permit a deduction for depreciation in respect of cost of a capital assets acquired for purpose of scientific research to the extent such cost has be written off under Ss. 10(2) (xiv)/35(1) and (2). The mere fact that a baseless claim was raise by some over-enthusiastic assessee who sought a double allowances or that such claim perhaps have been accepted by some authorities is not sufficient to attribute any ambiguity or doubt as to true scope of the provisions as they stood earlier.

Since there is no doubt or ambiguity about the earlier legislation (S. 10 (2) (vi) and S. 10(2) (xiv) of the 1922 Act and S. 32 (1) (ii) and S. 35(2)(i)(iv) of the 1961 Act.), and the 1980 finance (No.2) Act clarified the position by a retrospective amendment, the same did not offend the provision of the constitution. The legislature was within its right in amending the provision retrospectively w.e.f. 1-4-62.

Per B.P. J. Jeevan Ready, J. (concurring)

It cannot be said that the Indian legislature-as also the parliament - - made a conscious departure from the English amendment i.e. U.K. Finance Act (1944), S. 20(4) with the idea of providing an additional benefit to induce the Indian assessee to invest more in scientific research. A double deduction cannot be a matter of interference, it must be provided for in clear and express language, regard having to its unusual nature and its serious impact on the Revenues of the Stat. The scheme and structure of the English provision is different then ours.

The amendment introduced the words "or any other" in Cl. (iv) of sub-section (2) of S. 35. the said amendment merely clarificatory in nature. It makes explicit what was implicit in the provisions. Question of its constitutionality, therefore, does not arise. Though purporting to be retrospective, it does not take away any rights which had legally vested in the assessee. Escorts Limited v. Union of India. **AIR 1993 SC 2325: 1993 AIR SCW 404: 1993 Tax LR 162: (1993) 1 SCC 249: 1992 Supp JT 619.**